



Department of Planning, Building and Code Enforcement

STEPHEN M. HAASE, AICP, DIRECTOR

**PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA**

Project File Number, Description, and Location

PP03-05-183. The construction of a 6.3-acre, earthen emergency basin and associated infrastructure to provide storage flows that would exceed the 400 million gallons per day (mgd) capacity during high wet weather flows, or when power failures cause impairment of the equipment at the Water Pollution Control Plant. City of San Jose/County of Santa Clara, Owner, City of San Jose, Developer). Council District: 4

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

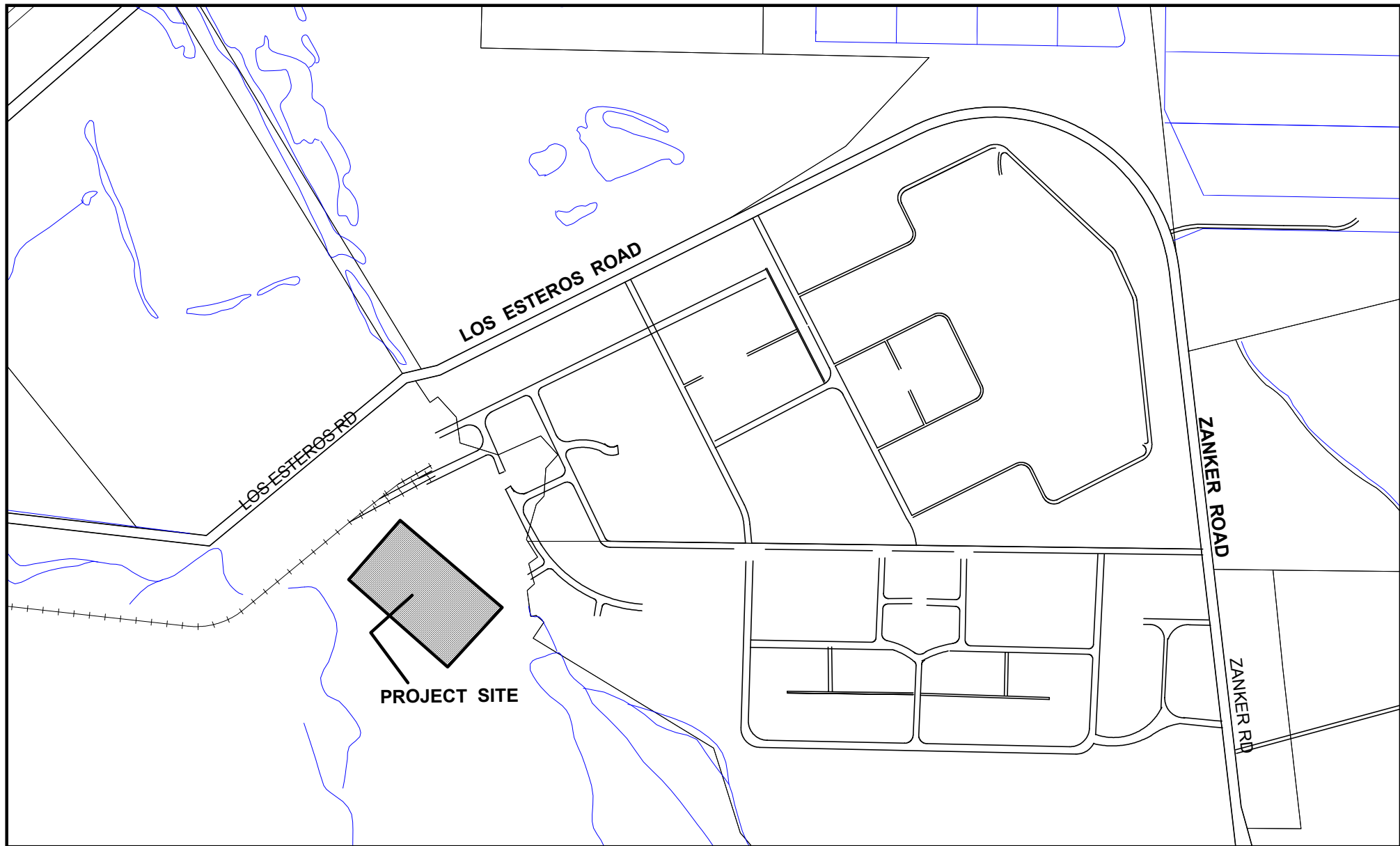
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **August 8, 2003**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **July 8, 2003** and ends on **August 8, 2003**.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 180 W. San Carlos Street, and the Alviso Branch Library, 5050 North First St, San José, CA 95002 San Jose, and online at www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2003.htm Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Susie Pineda** at (408) 277-4576.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: July 7, 2003

Deputy



Scale: 1"=700'
Date: 07/01/2003



File No: PP03-05-183

District: 04

Quad No: 20

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Water Pollution Control Plant Emergency Basin

PROJECT FILE NUMBER: PP03-05-183

PROJECT DESCRIPTION: The construction of a 6.3-acre, earthen emergency basin and associated infrastructure to provide storage flows that would exceed the 400 million gallons per day (mgd) capacity during high wet weather flows, or when power failures cause impairment of the equipment at the Water Pollution Control Plant.

PROJECT LOCATION & ASSESSORS PARCEL NO.: The project site is located adjacent to the southwest side of the Water Pollution Control Plant, approximately 2,350 feet north of SR 237 and approximately 1,900 feet west of Zanker Road. (A.P.N.: 015-30-098)

COUNCIL DISTRICT: 4

NAME OF APPLICANT: City of San Jose, Environmental Services Department

MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:

John Chien, City of San Jose, Environmental Services Department, 700 Los Esteros Road, San Jose, CA 95134; Phone # (408) 945-5329

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

1. AIR QUALITY: The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a less-than-significant level. The following mitigation would be implemented during all phases of construction on the project site:

- Water all active construction areas at least twice daily

- Cover all trucks hauling soil, sand, gravel and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Pave, apply water twice daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

2. BIOLOGICAL RESOURCES:

Burrowing Owl: Implementation of the following mitigation measures will reduce potential impacts to burrowing owls to less than significant levels.

- Pre-construction surveys for burrowing owls shall be conducted by a qualified ornithologist prior to any development occurring within 250 feet of the project site. These surveys, which shall include any potential habitat within 250 feet of construction areas, shall be conducted no more than 30 days prior to the start of site grading, regardless of the time of year in which grading occurs.
- If pre-construction surveys are conducted during the breeding season and confirm that burrowing owls are breeding within 250 feet of the project site, the occupied burrow shall be avoided. Avoidance would allow the use of areas currently occupied by burrowing owls to continue uninterrupted. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone (typically 250 feet) around the active burrow shall be established as determined by the ornithologist in consultation with CDFG. No activities, including grading or other construction work or relocation of owls, shall proceed that may disturb burrowing owls.
- If owls are resident within 250 feet of the project area during the non-breeding season, a qualified ornithologist in consultation with CDFG, shall passively relocate (evict) the owls to avoid the loss of any individuals if the owls are close enough to project areas that they or their burrows could be harmed by project activities. As a condition of a permit allowing relocation of burrowing owls, CDFG may require additional mitigation in the form of on-site or off-site habitat preservation and management if it does not agree that project impacts to burrowing owl habitat have not already been adequately mitigated. In some cases, CDFG may be willing to allow the eviction of an owl (during non-breeding season only) before mitigation plans are finalized. In such cases, a Mitigation Agreement shall be agreed to between the project proponent and CDFG. If an owl is resident within 250 feet of the project area during the non-breeding season but is far enough from the project site that direct impacts to the owl or its burrow are unlikely, CDFG may allow work to continue with a biologist monitoring the behavior of the owl to ensure that it is not disturbed to the point of nest abandonment.

Raptors other than Burrowing Owls: Implementation of the following mitigation measures are expected to reduce the potential project-related impacts to raptors other than burrowing owls to a less than significant level.

- Avoid construction during nesting season. Work shall be scheduled to avoid the nesting season to the fullest extent feasible. The nesting season for most birds in the South San Francisco Bay area, including raptors and shrikes, extends from January through August.
- If it is not possible to schedule construction between August and January, then pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no nest will be disturbed during project implementation. This survey shall be conducted no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (January through April), and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person shall inspect all areas in and immediately adjacent to (within 250 feet of) the impact areas for nests. If an active nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest.
- If vegetation is to be removed by the project and all necessary approvals have been obtained, potential nesting substrate (bushes, trees, grass, burrows) that will be removed by the project shall be removed before the nesting season (February) by a qualified ornithologist, in consultation with CDFG to help preclude nesting. Pre-removal surveys are required for some species and shall be conducted by a qualified ornithologist, in consultation with CDFG. Removal of vegetation or existing structures by the project shall be completed outside of the nesting season, which extends from February to September.

3. CULTURAL RESOURCES: The following mitigation will be incorporated into the proposed project:

- In compliance with state law, in the event human remains are encountered during earthmoving activities, all work within 25 feet of the find will stop and the Santa Clara County Coroner's office will be notified. If the remains are determined to be Native American, the Coroner would notify the Native American Heritage Commission to identify the "Most Likely Descendant" (MLD). The City, in consultation with the MLD, would then prepare a plan for treatment, study and reinterment of the remains. All significant artifacts and samples recovered during construction would be cataloged and curated by a qualified archaeologist and placed in an appropriate curation facility.
- In the event that prehistoric or historic resources are encountered during earthmoving activities, all work within 25 feet of the find will stop, the Director of Planning, Building, and Code Enforcement would be notified, and a qualified archaeologist will examine the find and make appropriate recommendations for collection, recordation and analysis of the find.

4. GEOLOGY AND SOILS: To reduce potentially significant impacts related to unstable soils, including Bay Muds, the following mitigation measure shall be implemented:

- Standard precautionary measures will be taken during project construction to minimize the risk of exposing people or structures to ground shaking from an earthquake.
- Earthquake resistant design in accordance with the latest edition of the Uniform Building Code shall be employed for the Emergency Basin and associated infrastructure.
- The following standard precautionary procedures shall be followed during the construction period consistent with City of San Jose grading permits and National Pollutant Discharge Elimination System Permit regulations:
 - Protect disturbed areas through minimization and duration of exposure by covering disturbed areas with rolled plastic sheeting or other like material
 - Control surface runoff (i.e. sand bags) and maintain low runoff velocities.
 - Trap sediment on site.
 - Minimize length and steepness of slopes.
- Where areas of unstable soils (e.g.) Bay Muds) are encountered during project construction, the unstable soils will be over-excavated and foundation stabilization will be performed using stable soils.

5. HAZARDS AND HAZARDOUS MATERIALS: The following measures have been included to reduce potential hazardous materials impacts:

- Prior to construction activities, the San Jose/Santa Clara WPCP shall retain a Certified Asbestos Consultant to perform an asbestos survey(s) to verify the quantity of asbestos (if any) in soils on-site. Should the pre-construction asbestos survey(s) identify the presence of asbestos, construction activities shall comply with State law, which requires a contractor, where there is asbestos-related work involving 100 square feet or more of asbestos containing materials, to be certified and that certain procedures regarding the removal of asbestos be followed.

6. HYDROLOGY AND WATER QUALITY: The following mitigation measures will reduce potential impacts to less than significant levels:

- Prior to the commencement of grading on site, the project sponsor shall file an NOI and prepare a SWPPP, in conformance with NPDES Permit requirements. Construction BMP's shall be outlined in the SWPPP, and shall include elements regarding construction site planning, housekeeping practices and material storage, vehicle and equipment fueling and maintenance, erosion and sedimentation controls, slope stabilization, dust control, road and construction entrance stabilization, storm drain inlet protection, and temporary drainage systems.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **August 8, 2003**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: July 7, 2003

Deputy

Adopted on: _____

Deputy